PUBLIC NOTICE

Federal Communications Commission
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DOMESTIC SECTION 214 APPLICATION FILED FOR ACQUISITION OF ASSETS OF MPOWER COMMUNICATIONS CORP. IN TEXAS BY XSPEDIUS MANAGEMENT CO.

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 03-40

On January 29, 2003, Mpower Communications Corp. ("Mpower") and Xspedius Management Co. Switched Services., LLC ("XMSS") (together "Applicants") filed an application, pursuant to section 63.04 of the Commission's rules,[1] for consent to transfer Mpower's Texas assets to XMSS, which will provide domestic interstate and intrastate services.[2]

Applicants assert that this transaction is entitled to presumptive streamlined treatment pursuant to section 63.03(b)(2)(i) of the Commission's rules because: (1) the proposed transaction would result in XMSS having a market share in the interstate, interexchange market of less than 10 percent; (2) XMSS would provide competitive telephone exchange services or exchange access services (if at all) exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the transaction; and (3) neither Mpower nor XMSS is dominant with respect to any service.

Mpower is a competitive local exchange carrier currently providing local, long distance, switched access, other access, DSL, and Internet access services in 27 markets in California, Florida, Georgia, Illinois, Michigan, Nevada, Ohio, and Texas. Mpower is bringing geographic concentration to its business by transitioning its customers and assets in several states to other service providers.

XMSS and Xspedius Equipment Leasing, LLC ("XEL") are subsidiaries of Xspedius Management Co., LLC ("XMC"), a holding company headquartered in St. Louis, Missouri, which provides competitive telecommunications services through its operating subsidiaries. XMC has an operating footprint in 36 markets spanning 20 states and the District of Columbia.

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1 47 C.F.R § 63.04; *see* 47 U.S.C. § 214.

2 Applicants have also filed applications to transfer assets related to international services. Any action on this domestic 214 application is without prejudice to Commission action on other related pending applications.

In 2002, XMC acquired customer and local switching assets and more than 3,500 route miles of fiber, as well as fiber and conduit inventory in Atlanta, Dallas/Ft. Worth, Houston, Fort Lauderdale/Miami/West Palm Beach, Tampa, and Washington, DC/Northern Virginia from e.spire Communications, a competitive telecommunications carrier then in bankruptcy.

Mpower requests authorization to transfer all of its assets and associated customers in Dallas, Houston, Forth Worth, San Antonio and Austin, Texas, to affiliates of XMC. Mpower will transfer its entire Texas network assets, including switches, collocation equipment and ILEC-leased facilities, to XEL, and will transfer its customers to XMSS for domestic service. XMSS will serve those customers in part by leasing facilities in Texas from XEL.

Applicants assert that the proposed transaction is in the public interest because it will allow Mpower to enhance its competitive position by providing Mpower with greater flexibility in obtaining financing, which will yield benefits for Mpower and allow Mpower to continue operations in the long term. Mpower is continuing its long-term plan for financial viability by transitioning its customers and assets in Florida, Georgia, Ohio, Michigan, and Texas to other service providers.

Applicants assert that, as a result of this transaction, XMC and its affiliates will be in a better position to compete with Southwestern Bell Telephone Company, the dominant incumbent local exchange carrier in Texas. XMC currently has networks, switches, and/or customers in Austin, Corpus Christi, Dallas/Ft. Worth/Irving, El Paso, Houston, and San Antonio. Applicants assert that acquisition of the Mpower assets will solidify and expand XMC's presence in Texas, and make it a more formidable competitor in the Texas markets. By strengthening Mpower in other markets, and XMC in Texas, Applicants assert that this transaction will enhance competition and serve the public interest.

Applicants further state the proposed transaction will not harm Mpower's customers because they will be served by XMSS after the proposed transfer of assets. Applicants state that the proposed transaction will not result in a decrease in currently available services or an increase in rates charged to customers.

GENERAL INFORMATION

The transfer of assets identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer of assets application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Interested parties may file **comments within 14 days** and **reply comments within 21 days** of this notice.[3] Unless otherwise notified by the Commission, an applicant is permitted to transfer control of the

[3] *See* 47 C.F.R. § 63.03(a).

domestic lines or authorization to operate on the 31st day after the date of this notice.[4] Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

In addition, one copy of each pleading must be sent to each of the following:

(1) the Commission's duplicating contractor, Qualex International, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554; e-mail: qualexint@aol.com; facsimile: (202) 863-2898; phone: (202) 863-2893.

(2) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C437, Washington, D.C. 20554; e-mail: twilson@fcc.gov, and

[4] Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

(3) Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 6-A461, Washington, D.C. 20554; e-mail: dcjohnso@fcc.gov, and

(4) William Dever, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C266, Washington, D.C. 20554; e-mail: wdever@fcc.gov; and

(5) Imani Ellis-Cheek, Telecommunications Division, International Bureau, 445 12th Street, S.W., Room 6-A739, Washington, D.C. 20554; email: iellis@fcc.gov; and

(6) Nandan Joshi, Office of General Counsel, 445 12th Street, S.W., Room 8-A820, Washington, D.C. 20554; e-mail: njoshi@fcc.gov.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. They may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

For further information, please contact Tracey Wilson, at (202) 418-1394, Dennis Johnson (202) 418-0809, or William Dever, Competition Policy, Wireline Competition Bureau at (202) 418-1578.

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